

MEMORANDUM

DATE: February 13, 2007

TO: All Members of the Delaware State Senate

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 7 [School Bullying]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 7 which creates the School Bullying Prevention Act. Council has the following observations.

First, bullying is a pervasive problem which merits a comprehensive system of deterrence. For example, the attached April 26, 2001 Dialog article quotes statistics from the National Education Association estimating that 160,000 students miss school each day out of fear of being attacked or bullied and 10% of children who drop out of school do so because of repeated bullying.

Second, the Department of Education adopted regulations in 2002 which require districts and charter schools to submit reports on bullying to the Department. See attached 14 DE Admin Code 601. In its comments on the regulations in 2002, the Council noted the anomaly inherent in requiring reporting of bullying while not requiring districts to affirmatively prohibit bullying.

Third, while the definition of “bullying” should be sufficiently broad to encompass a variety of forms (e.g. verbal, physical, sexual, and property threats), it must be tempered by the First Amendment. Consistent with the attached synopsis of Saxe v. State College Area School District, the Third Circuit struck down a Pennsylvania school district anti-harassment policy which defined harassment as “any unwelcome verbal, written or physical conduct which offends, denigrates or belittles an individual” because of characteristics including race, religion, gender, sexual orientation and disability. The definition of “bullying” in H.B. No. 7 may similarly be too broad. Soliciting embarrassment of a student [Section 4112D(a)(4)] could legitimately occur in a school election debate in which another candidate is criticized for his/her stance on a policy or practice.

Fourth, the definition of “bullying” should recognize that some playful teasing among children is normal. It should also account for sports-related interaction (e.g. a linebacker may be encouraged by

coaches to place the other team's quarterback in reasonable fear of harm to his physical well-being). Cheerleaders may encourage their football team to "push 'em back, shove 'em back, way back" at a game or may otherwise verbally "denigrate" the opposing team at a pep rally. For these reasons, it would be preferable to narrow the scope of the definition in H.B. No. 7. For example, the DOE regulatory definition of "bullying" essentially limits it to a pattern or practice "over a period of time" so as not to "capture" incidental, isolated teasing or play activities. Requiring schools to report and punish most sarcastic or derogatory remarks made by students may simply be impractical. However, SCPD also realizes that one serious incident or a series of less serious incidents should qualify as bullying.

Fifth, there is a minor grammatical error in Section 4112D(b)(E). The word "who" should be substituted for the word "that".

In summary, SCPD endorses the concept of the bill subject to narrowing the definition of "bullying" somewhat and correcting the grammatical error in Section 4112D(b)(E).

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or recommendations on the proposed legislation.

cc: The Honorable Ruth Ann Minner
Members of the House of Representatives
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb7 2-07 bullying.doc